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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/509,958

04/15/2005

Herbert Kurzinger

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MERCHANT & GOULD PC

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MINNEAPOLIS, MN 55402-0903

EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/509,958	<b>Applicant(s)</b> KURZINGER ET AL.	
	<b>Examiner</b> C. SAYALA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/31/08, 3/31/08, 10/4/2004</u> .                             | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 8-10 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 1351878.

See Figures, page 1, col. 2 and page 2, col. 1 and the claims. The feed bar contains zones that are softenable in water and other zones that are not, meeting claim 9.

2. Claims 1, 3, 5-6, 7-10, 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Axelrod (US Patent 5128153).

See col. 1, lines 53-65, col. 2, lines 25+, col. 3, lines 15-60, and the claims.

### ***Claim Rejections - 35 USC § 102/Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bansal (US Patent 4542686) or DE 3212406.

The terminology “for aquatic animals” does not distinguish the composition claims. See *In re Zierden*, 162 USPQ 102, *In re Jones*, 50 USPQ 48, *In re Spada*, 15 USPQ 2d, 1655, *In re Thuau* 57 USPQ 324. The patent teaches two different feed compositions with different content *and* different colors co-extruded so that they are merged into one feed unit and yet are distinguishable (marbled). The DE patent shows laminates that have different compositions, colorings, etc. intended as fish feed.

4. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by, or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bansal (US Patent 4542686).

The rejection for claim 14 only is being made under both statutes since the reference does not specify fish. To adapt the Bansal feed preparation for a fish feed would have been obvious since “pet” encompasses fish.

5. Claims 1-6, 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Geromini et al. (US Patent 5695797).

Col. 1, line 44 to col. 2, line 26 and abstract disclose an outer layer with proteinaceous materials such as meat or fish and an inner filling that has oil, co-extruded. The oily filling contains materials such as yeast, sugar, milk powder, vitamins

and minerals. The product can be of two colors and of any shape. To adapt such a preparation for fish would have been obvious since "pet" encompasses fish and for the advantage of extruding two compositions and providing such, at the same time.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/  
Primary Examiner, Art Unit 1794**

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